

Remarks

Amendment to specification

The specification is amended to reflect the priority claim that was made in the application filing transmittal, using the language suggested by the examiner at the bottom of page 2 of the office action.,

Amendment to claims

Claim 6 is amended to correct an obvious error as noted by the Examiner at the top of page 3 of the office action.

Claim 20 is amended to be more definite. Support for the “at least 90%” language is in the specification on page 31, line 16.

Claim Objection & Claim Rejection Under 35 U.S.C. § 112

On page 3 of the office action the Examiner objected to claim 6 and rejected claim 20. It is believed that the claim amendments discussed above overcome the objection and rejection.

Claim Rejections 35 U.S.C. § 103

Applicants acknowledge the Examiner’s advisement made on page 4 of the office action, first paragraph; each invention disclosed in this application was commonly owned by assignee when made.

The Examiner rejected Claims 1-6, 9-10, 15 and 22-25 under 35 U.S.C. §103(a) as being unpatentable over NEFF et al. (US 6,534,313) in view of WAGNER et al. (US2002/0157130).

The subject matter described in WAGNER et al., which qualifies as prior art only under one or more of subsections (e), (f), and (g) of 35 U.S.C. §102, was, at the time Applicants’ invention made, owned by the same entity or subject to an obligation of assignment to the same entity. Thus, WAGNER et al. can not be used as a prior art reference for purposes of 35 U.S.C. §103(a) (see 35 U.S.C. §103 (c)).

The subject matter of WAGNER et al. was assigned to Agritope Inc. as evidenced by the recorded assignment document at real/frame no. 010809/0982 (copy attached as Exhibit A). The subject matter of the present application was assigned to Exelixis Plant Sciences, which used to be Agritope, as evidenced by the assignment document at real/frame no. 011840/0130 (copy attached as Exhibit B). As further evidence that the

subject matter of WAGNER et al. is actually owned by Exelixis Plant Sciences, attached as Exhibit C is a press release issued by Exelixis, Inc. that explains that Agritope was renamed Exelixis Plant Sciences, Inc.

It is noted that every prior art rejection made relies on WAGNER et al. Accordingly, it is believed that for the foregoing reasons, all of the rejections made under 35 U.S.C. § 103 should be withdrawn. In view of this, the additional references cited by the Examiner have not been reviewed in detail, and thus applicants make no admission as to whether there is agreement with respect to the Examiner's analysis and use of these references against Applicants' claimed invention.

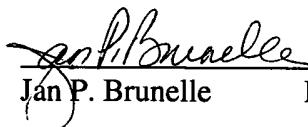
As an aside, it is noted that the examiner relied on NEFF for teaching "analysis of T2 plants by digital imaging (col. 48, lines 55-59). However the cited passage concerns imaging of recapitulation lines, not lines containing the insertional mutagen.

Closing remarks

It is believed that all of the rejections are overcome, and that the claims are in condition for allowance. The examiner is encouraged to telephone the undersigned to discuss any further issues that may need resolution prior to allowance.

Respectfully submitted,

Dated: August 25, 2003


Jan P. Brunelle _____ Reg. No. 35,081

EXELIXIS, INC.
170 Harbor Way
P.O. Box 511
South San Francisco, California 94083-0511
Telephone: (650) 837-8180
Facsimile: (650) 837-8234

EXHIBIT A

OPR/ASSIGNMENTS

1/00

1:03: PAGE 002/

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JULY 25, 2000

PTAS

IOTA PI LAW GROUP
PETER J. DEHLINGER
P.O. BOX 60850
PALO ALTO, CA 94306

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RECORDATION DATE: 07/17/2000

REEL/FRAME: 010809/0982

NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
WAGNER, RV

DOC DATE: 07/10/2000

ASSIGNOR:
MATHEWS, HELENA

DOC DATE: 07/10/2000

ASSIGNOR:
LIU, XING LIANG

DOC DATE: 07/10/2000

ASSIGNOR:
WAGGONER, WENDY J.

DOC DATE: 07/10/2000

ASSIGNEE:
AGRITOPE, INC.
16160 S.W. UPPER BOONES FERRY ROAD
PORTLAND, OREGON 97224-7744

OPR/ASSIGNMENTS

SERIAL NUMBER: 09522334

PATENT NUMBER:

0/00

1:03: PAGE 003/1 RightFAX
FILING DATE: 01/09/2000
ISSUE DATE:

010809/0982 PAGE 2

STEVEN POST, EXAMINER
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PATENTS ONLY

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1. Name of conveying party(ies): Ry Wagner Helena Mathews Xing Liang Liu Wendy J. Waggoner	2. Name/address of receiving party(ies): Agritops, Inc. 15160 S.W. Upper Boones Ferry Road Portland, Oregon 97224-7744
Add'l names of conveying parties attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Nature of conveyance: <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Other <input type="checkbox"/> Change of Name <input type="checkbox"/> Reassignment	
4. Date of executions: 07/10/2000	Add'l names of receiving parties attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

5. Application number(s) and/or patent number(s): If this document is being filed with a new application, the date of signature by the first named inventor was: _____	
A. Patent Application No. (s) 69/522,334 filed 03/09/2000	B. Patent No. (s)

Additional numbers attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
6. Name and address of party to whom correspondence concerning document should be mailed: Iota Pi Law Group P.O. Box 60850 Palo Alto, CA 94306 (650) 324-0880	7. Total No. of applications and patents involved: one (1)
	8. Total fee (37 CFR §3.41): \$40.00 <input checked="" type="checkbox"/> Charge Deposit Account No. 04-0531
	9. Total number of pages, including cover sheet, attachments and document: 5

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Peter J. Dehlinger
Name of Person Signing

Signature

7-17-2000

Date

Assignment

THIS ASSIGNMENT, by Ry Wagner, Helena Mathews, Xing Liang Liu, and Wendy J. Waggoner (hereinafter referred to as the Assignors), residing at 1972 Alder Street, Eugene, OR 97405, 14546 N.W. Joseph Court, Portland, OR 97229, 2061 W. 16th Avenue, Eugene, OR 97402, and 11915 S.W. Summer Crest Drive, Tigard, OR 97223, respectively, witnesseth:

WHEREAS, the said Assignors have invented certain new and useful inventions set forth in an application for Letters Patent of the United States entitled TRAIT-ASSOCIATED GENE IDENTIFICATION METHOD, bearing Serial No. 09/522,334 and filed on March 9, 2000;

WHEREAS, Agritope, Inc., a corporation duly organized under and pursuant to the laws of Oregon, and having its principal place of business at 16160 S.W. Upper Boones Ferry Road, Portland, OR 97224-7744 (hereinafter referred to as the Assignee), is desirous of acquiring the entire right, title and interest in and to said inventions and said application for Letters Patent of the United States, and in and to any Letters Patent or Patents, United States or foreign, to be obtained therefor and thereon;

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the said Assignors have sold, assigned, transfer and set over, and by these presents does sell, assign, transfer and set over, unto the said Assignee, its successors, legal representatives and assigns, the entire right, title and interest in and to the above-mentioned inventions, application for Letters Patent, and any and all Letters Patent or Patents in the United States of America and all foreign countries which may be granted therefor and thereon, and in and to any and all divisions, continuations, and continuations-in-part of said application, or reissues, reexaminations, or extensions of said Letters Patent or Patents, and all rights under the International Convention for the Protection of Industrial Property, the same to be held and enjoyed by the said Assignee, for its own use and behoof and the use and behoof of its successors, legal representatives and assigns, to the full end of the term or terms for which Letters Patent or Patents may be granted, as fully and entirely as the same would have been held and enjoyed by the Assignor, had this sale and assignment not been made.

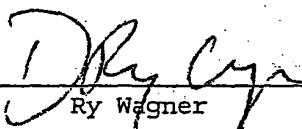
AND, for the same consideration, the said Assignors hereby covenant and agree to and with the said Assignee, its successors, legal representatives and assigns, that, at the time of execution and delivery of these presents, the said Assignors are the joint and lawful owners of the entire right, title and interest in and to the said inventions and the application for Letters Patent

above-mentioned, and that the same are unencumbered and that the said Assignors have good and full right and lawful authority to sell and convey the same in the manner herein set forth.

AND, for the same consideration, the said Assignors hereby covenant and agree to and with the said Assignee, its successors, legal representatives and assigns, that the said Assignors will, whenever counsel of the said Assignee, or the counsel of its successors, legal representatives and assigns, shall advise that any proceeding in connection with said inventions, or said application for Letters Patent, or any proceeding in connection with Letters Patent for said inventions in any country, including interference proceedings, is lawful and desirable, or that any division, continuation, or continuation-in-part of any application for Letters patent, or any reissue or extension of any Letters Patent, to be obtained thereon, is lawful and desirable, sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done for the procurement, maintenance, enforcement and defense of Letters Patent for said inventions, without charge to said Assignees, their successors, legal representatives and assigns, but at the cost and expense of the said Assignee, its successors, legal representatives and assigns.

AND, the said Assignors hereby request the Commissioner of Patents to issue said Letters Patent of the United States to the said Assignee as the assignee of said inventions and the Letters Patent to be issued thereon for the sole use and behoof of the said assignee, its successors, legal representatives and assigns.

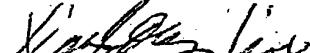
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Ry Wagner

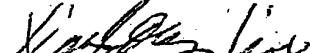
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Helena Mathews

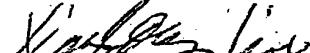
Date: 7/10/00


Helena Mathews

Date: 7/10/00


Xing Liang Liu

Date: 7/10/00


Wendy J. Waggoner

WITNESSES TO SIGNATURE BY Ry Wagner

1.

Matthew G Kramer

Signature

7/10/00

Date

Matthew G Kramer

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City, State & Zip Code

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Matthew G Kramer

Signature

Marianne M Starks7/10/00

Date

Marianne M. Starks

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City, State & Zip Code

WITNESSES TO SIGNATURE BY Helena Mathews

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Matthew G Kramer

Signature

Marianne M Starks7/10/00

Date

Matthew G Kramer Marianne M Starks

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* * * * *

Note: May be notarized in lieu of witnessing.

WITNESSES TO SIGNATURE BY Xing Liang Liu

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Matthew G. Kramer

Signature

7/10/00

Date

Matthew G. Kramer

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Marianne M. Starks

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Date

Marianne M. Starks

Print Name

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WITNESSES TO SIGNATURE BY Wendy J. Waggoner

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Matthew G. Kramer

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Date

Matthew G. Kramer

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Signature

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Date

Marianne M. Starks

Print Name

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Street Address

Portland, OR 97224

City, State & Zip Code

* * * * *

Note: May be notarized in lieu of witnessing.



MARCH 18, 2002

EXELIXIS, INC.
JAN P. BRUNELLE
170 HARBOR WAY
P.O. BOX 511
SOUTH SAN FRANCISCO, CA 94083-0511

Chief Information Officer
Washington, DC 20231
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RECORDATION DATE: 08/27/2001

REEL/FRAME: 012487/0776
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

LIU, ALEX

DOC DATE: 04/26/2001

ASSIGNOR:

WADSWORTH, GEORGE

DOC DATE: 04/26/2001

ASSIGNOR:

MATHEWS, HELENA V.

DOC DATE: 04/26/2001

ASSIGNOR:

VAN WINKLE, JILL

DOC DATE: 04/26/2001

ASSIGNOR:

WAGNER, RY

DOC DATE: 04/26/2001

ASSIGNEE:

EXELIXIS PLANT SCIENCES, INC.
16160 S.W. UPPER BOONES FERRY ROAD
PORTLAND, OREGON 97224-7744

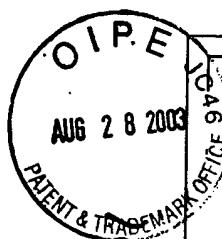
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012487/0776 PAGE 2

SERIAL NUMBER: 09846758
PATENT NUMBER:

FILING DATE: 05/01/2001
ISSUE DATE:

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Name (line 1) Alex Liu

Execution Date
Month Day Year
04 26 2001

Name (line 2)

Second Party

Name (line 1) George Wadsworth

Execution Date
Month Day Year
04 26 2001

Name (line 2)

Receiving Party

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Name (line 1) Exelixis Plant Sciences, Inc.

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Address (line 3) Portland

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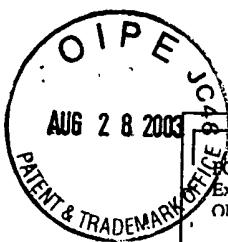
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Correspondent Name and Address		Area Code and Telephone Number	(650) 837-8180	
Name	Jan P. Brunelle			
Address (line 1)	Exelixis, Inc.			
Address (line 2)	170 Harbor Way			
Address (line 3)	P.O. Box 511-			
Address (line 4)	South San Francisco, CA 94083-0511			
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09/846,758				
If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.		Month	Day	Year
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Fee Amount		Fee Amount for Properties Listed (37 CFR 3.41): \$ 40		
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Jan P. Brunelle				August 23, 2001
Name of Person Signing		Signature		Date



AUG 28 2003

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JOINT ASSIGNMENT

WHEREAS we, Alex Liu, George Wadsworth, Helena V. Mathews, Jill Van Winkle, Ry Wagner, Sandra Peters and Stephanie Clendennen, have previously entered into an agreement with Exelixis, Inc., South San Francisco, CA, to assign all our right, title and interest in and to any and all inventions made or conceived or reduced to practice during the course of our employment with Exelixis, and further agreed to execute additional assignment documents to assist Exelixis with respect to its proprietary rights, and wherein we, during the course of our employment with Exelixis Plant Sciences and/or Agritope, Inc., predecessor of Exelixis Plant Sciences, have invented a SYSTEM FOR FUNCTIONAL GENE DISCOVERY IN PLANTS (hereinafter "Invention"), disclosed in United States provisional patent application no. 60/201,245, filed on May 1, 2000, in United States utility patent application no. 09/846,758 filed on May 1, 2001, and International PCT patent application no. PCT/US01/13886 filed on May 1, 2001.

WHEREAS Exelixis, Inc., 170 Harbor Avenue, P.O. Box 511, South San Francisco, California 94083-511 is desirous of obtaining an assignment document that indicates that Exelixis Plant Sciences, Inc., a wholly owned subsidiary of Exelixis, Inc. (collectively hereinafter referred to as Assignee), has received all right, title and interest to the Invention.

Now, therefore, and in consideration of our employment and compensation paid to us by Assignee and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, we have assigned to said Assignee and said Assignee's legal representatives, successors and assigns, the entire right, title, and interest (a) in and to said application and said Invention; (b) in and to all rights to apply for foreign patents on said invention; (c) in and to any and all applications filed and any and all patents granted on said Invention in the United States or any foreign country, including each and every application filed and each and every patent granted on any application which is a division, substitution, continuation or nonprovisional 37 CFR 1.53(b) application of any of said applications; and (d) in and to each and every reissue or extensions of any of said patents; and we do hereby authorize and request the Commissioner of Patents and Trademarks to issue said Letters Patent to the above-mentioned Assignee agreeably with the terms of this agreement.

We hereby authorize the above-mentioned Assignee or its legal representative to insert in this instrument the filing date and serial number of said application or any other information that may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

We have conveyed to said assignee the entire right to make application in its own behalf for protection of said Invention in countries foreign to the United States and where expedient to claim under the International Convention or other international arrangement for any such application the date of the said United States application (or other application if any there be) in priority to other applications; and we have agreed that we will at any time upon request, without further or additional compensation or additional consideration, but at the expense of the said assignee, execute such additional assignments and other writings and do such additional acts as said assignee may deem necessary or desirable or perfect the assignee's enjoyment of this grant, and render all necessary assistance in making application for and obtaining original, divisional, renewal, reissued or extended Letters Patent of the United States or of any and all foreign countries on said invention, and in enforcing any rights or chose in action accruing as a result of such application or patents, by giving testimony in any proceedings or transactions involving such applications or patents, and by executing preliminary statements and other affidavits, it being understood that the foregoing covenant and agreement shall bind, and inure to the benefit of the assigns and legal representatives of both parties.

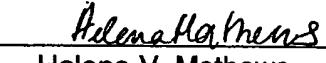
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By: 
Alex Liu

Date: 26 Apr/01

By: 
George Wadsworth

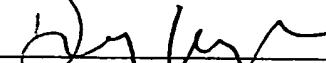
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By: 
Helena V. Mathews

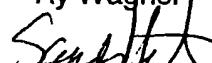
Date: 4/26/01

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Jill Van Winkle

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Ry Wagner

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Sandra Peters

Date: 26 April 01

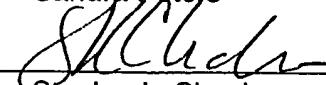
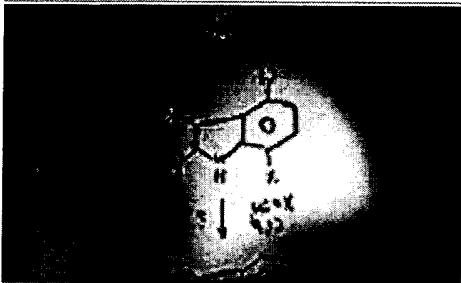
By: 
Stephanie Clendennen



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ARCHIVED PRESS RELEASE

Exelixis Completes Acquisition of Agritope

SOUTH SAN FRANCISCO, Calif.

Friday, December 08, 2000

Exelixis, Inc. (Nasdaq: EXEL) today announced the completion of its acquisition of Portland, Oregon based Agritope, an agricultural biotechnology company that develops improved plant products and provides technology for the agricultural industry. Agritope will be renamed Exelixis Plant Sciences, Inc. and will function as a wholly-owned subsidiary of Exelixis, Inc.

The acquisition provides Exelixis with expertise in higher plant model systems such as Micro-Tomato, Arabidopsis and grasses, as well as key intellectual property and extensive experience in plant biology. This proficiency, combined with Exelixis' superior programs in bioinformatics, genomics and simple plant model system genetics programs, creates an industry-leading plant genomics program.

"The technology and intellectual property base of the newly formed Exelixis Plant Sciences will provide opportunities to establish additional funded partnerships with major companies in numerous areas with large market opportunities, including plant traits, industrial products, biopetroleums, and agricultural chemicals," stated George A. Scangos, Ph.D., president and chief executive officer of Exelixis, Inc. "We believe that we will be able to generate substantial income through nearer-term agricultural programs, which in turn will allow us to focus our internal research on our oncology development program."

In connection with the completion of the acquisition, the stockholders of Agritope will receive approximately 1.7 million shares of Exelixis common stock in exchange for all of the outstanding shares of Agritope Series A preferred and common stock. Outstanding Agritope stock options and warrants will be exercisable for shares of Exelixis common stock based on a final exchange ratio of 0.35 of a share of Exelixis common stock for each share of Agritope capital stock.

The acquisition will be accounted for as a purchase transaction. Exelixis' financial statements for the period ending December 31, 2000 will include the results for Agritope for December 2000. In addition, in the fourth quarter and for 2000, Exelixis expects to record a one-time charge for acquired in-process research and development of approximately \$38 million and approximately \$0.5 million for amortization of goodwill and other acquired intangible assets. The company expects to record goodwill and other acquired intangible assets totaling \$57 million, which will be amortized to earnings over future periods. The final determination of the in-process research and development charge and the goodwill and other acquired intangible assets to be recorded are subject to the completion of a final valuation analysis to be completed shortly following the closing.

Exelixis, Inc. is a leading life sciences biotechnology company focused on product development through its expertise in comparative genomics and model system genetics. These technologies provide a rapid, efficient and cost-effective way to move from DNA sequence data to knowledge about the function of genes and the proteins that they encode. The company's technology is broadly applicable to all life science industries including pharmaceutical, diagnostic, agricultural biotechnology and animal health. Exelixis has partnerships with Bayer, Pharmacia, Bristol-Myers Squibb and Dow AgroSciences and is building its internal development program in the area of oncology. For more information, please visit the company's web site at www.exelixis.com.

Where You Can Find Additional Information

Investors and stockholders of Exelixis have been advised to read the prospectus/proxy statement regarding the business combination transaction referred to above because it

contains important information. Agritope and Exelixis have mailed the prospectus/proxy statement about the transaction to the Agritope stockholders. This prospectus/proxy statement has been filed with the Securities and Exchange Commission (the "SEC"). Investors and security holders may obtain a free copy of the prospectus/proxy statement and other documents filed by the companies at the SEC's web site at <http://www.sec.gov>. The prospectus/proxy statement and such other documents may also be obtained from Exelixis or Agritope by directing such requests to the companies. In addition to the registration statement and the prospectus/proxy statement, Exelixis and Agritope each file annual, quarterly and special reports, proxy statements, registration statements and other information with the Securities and Exchange Commission. You may read and copy any reports, statements or other information filed by Exelixis or Agritope at the SEC public reference rooms at 450 Fifth Street, N.W., Washington, D.C. 20549 or at any of the SEC's other public reference rooms in New York, New York and Chicago, Illinois. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. Agritope's and Exelixis' filings with the SEC are also available to the public from commercial document-retrieval services and at the web site maintained by the SEC at <http://www.sec.gov>.

Solicitation of Proxies; Interests of Certain Persons in the Transaction

Agritope, Exelixis, their respective officers and directors and certain other members of management or employees may be deemed to be participants in the solicitation of proxies from stockholders of Agritope with respect to the transactions contemplated by the merger agreement. A description of any interests that Agritope's directors and executive officers have in the merger will be available in the proxy statement/prospectus.

Forward Looking Statements

The forward looking statements contained in this press release involve risks and uncertainties that may affect our business, as more fully discussed in the "Risk Factors" section of our filings with the U.S. Securities and Exchange Commission. These risks and uncertainties include, but are not limited to, our ability to successfully integrate the employees, research and operations of Agritope, generate additional revenues by entering into new collaborations or expanding existing collaborations, protect the acquired intellectual property and successfully continue the development of existing research programs and realize commercial value from those efforts.

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